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No. 294. 293
Off. of Norbert. e Mitchell, Atty
for Certain Interest

Office Supreme Court U. S.
FILED
MAR 24
JAMES H. McKEN

Supreme Court of the United State

OCTOBER TERM, 1901.

Filed Mar. 24, 1902.

THE UNITED STATES, *Appellant*,
v.
WILLIAM T. SAMPSON, Rear Admiral, U. S. Navy.
} No. 597.

Brief In Opposition To Motion to Dismiss for Want of Jurisdiction, Submitted By Leave of Court, By Counsel Other Than Those Appearing for the Appellee Sampson.

In addition to the prize proceeding instituted by Rear Admiral Sampson, a similar proceeding was instituted by Admiral Dewey for captures at Manila, May 1, 1898, that proceeding to final decree *pari passu* with the *Sampson* case and upon this decree appeals were taken as in the *Sampson* case to the Court of Appeals of the District of Columbia and to this court. The record was taken to the Court of Appeals and held there without action, awaiting the decision of the *Sampson* case.

The question of jurisdiction involved on the appeal to that court and on the appeal to this court in the *Sampson* case necessarily also arises in the *Dewey* case. Counsel for Admiral Dewey signing this brief, and counsel for numerous officers and men interested in both the *Sampson* and

Dewey cases who also sign this brief, are equally desirous as are the counsel for Admiral Sampson and for the United States, of avoiding the circuitous method of reaching a final decision by this court through the Court of Appeals.

The learned Chief Justice of that court has construed the statutes governing appeals in prize cases in the light of the decisions of this court and has reached the conclusion, after learned and elaborate argument, that the appeal from the decree of the Supreme Court of the District of Columbia is directly to this court and not through the Court of Appeals. All parties interested in both the Sampson and the Dewey cases unite in desiring to uphold this decision.

Jurisdiction, it is true, can not be conferred by consent, but rests upon statute. Still it may not be improper to point out that the acts providing for distribution in prize have been repealed (Act of March 3, 1899, § 13, 30 Stat. L. 1007), and that consequently further actions like these can not occur.

A decision of this court sustaining the decision of the Court of Appeals will do substantial justice to all parties interested, will reach a final result more expeditiously than by going through the Court of Appeals, and will grant these libellants, who are asking on behalf of their officers and men as well as themselves the adjudication of a bounty given for special service to their country, a final decision at a far earlier date than could be secured by going through the Court of Appeals. They have once gone before that court and jurisdiction has been denied; it would be a substantial hardship to have jurisdiction again denied in this court and to be obliged for a third time to knock at the door of an appellate tribunal, even if sure then of admission.

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The construction of the statutes is so elaborately and carefully stated by the learned Chief Justice of the Court of Appeals, that counsel have no confidence in being able to add to that presentation.

H. A. HERBERT,
BENJ. MICOU,
Attorneys for Admiral George Dewey.

GEORGE A. KING,
WILLIAM B. KING,
Attorneys for Numerous Officers and Men Appearing by and through Admiral Dewey and Rear Admiral Sampson.